

SITE DEVELOPMENT PERMIT

FILE NO.	H15-056
LOCATION OF PROPERTY	1600 Saratoga Avenue
ZONING DISTRICT	CG Commercial General
GENERAL PLAN DESIGNATION	Regional Commercial
PROPOSED USE	Site Development Permit to allow the repair and repaving of the parking lot and the replacement of traffic loops at an existing shopping center (Westgate Mall) on a 45-gross acre site
ENVIRONMENTAL STATUS	Exempt under CEQA Guidelines Section 15301(a) for Existing Facilities
OWNER/ADDRESS	FR Westgate Mall LLC 1600 Saratoga Avenue San Jose, California 95129
APPLICANT/ADDRESS	Dun-Rite Excavating Inc. 5382 Brisa Street Livermore, California 94550

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are relevant facts regarding the proposed project:

1. **Project Description.** The proposed project is a Site Development Permit to allow the repair and repaving of the parking lot and the replacement of traffic loops at an existing shopping center (Westgate Mall) on a 45-gross acre site. There is no expansion or change of use, and no changes to setbacks are proposed. There are no exterior modifications proposed to existing buildings on-site and no grading is proposed. A total of two traffic loops will be replaced, and the asphalt repair and replacement will total 4.7 acres and occur in 25 short-term phases to ensure the availability of parking and adequate circulation.
2. **Site Information.** The site is located on the northeast corner of Saratoga Avenue and West Campbell Avenue. The site is developed with an approximately 660,000 square foot commercial shopping center. The subject site is bounded by Saratoga Avenue to the northwest, Atherton Avenue to the northeast, Hamilton Avenue to the southeast, and West Campbell Avenue to the southwest.
3. **General Plan.** The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for the subject site is Regional Commercial. This designation is applied primarily to existing regional shopping centers, though sometimes it may reflect the cumulative attraction of a regional center and one or more nearby community or specialty commercial centers.

4. **Zoning.** The subject site is located in the CG Commercial General Zoning District. Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for installation of pavement on any portion of a lot and in conformance with the applicable zoning regulations.
 - a. **Parking.** No parking spaces will be added or removed as part of this project. The parking configuration and layout of the repaved area will match the existing.
5. **CEQA.** The proposed project is exempt under Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). This section provides an exemption for Existing Facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to: (a) Interior or Exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances.

FINDINGS

Based on the analysis of the above facts with respect to the following additional Site Development Permit findings (Section 20.100.630), the Director of Planning finds that:

1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that the proposed parking lot repaving and landscape modifications will be contained within the area of the site will provide sufficient parking spaces and upgrade the site with additional trees and landscaping. No changes to the existing buildings are proposed.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that no new construction is proposed.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. Under the provisions of 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that the project involves repaving of parking lot and the replacement of traffic loops and will not adversely impact the adjacent property or properties.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that no new landscaping or other facilities are proposed.
5. Traffic access, pedestrian access and parking are adequate in that the project will continue to provide enough parking to accommodate the existing use. Sufficient parking and circulation will be provided during the phased repaving and repair.

6. The application is consistent with the General Plan designation of Regional Commercial in that the designation is applied to regional shopping centers. The proposed project will improve the parking areas of the site, traffic safety, and overall vehicle circulation.

In accordance with the findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the improvements described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by

the approval authority.

5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Pavement Replacement Exhibit of Wesgate Center for Dun Rite" dated November 2015, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
9. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
10. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
12. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
13. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
14. **Nuisance.** As required by Title 20 of the San Jose Municipal Code, construction on this site shall be conducted in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
15. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
16. **Lighting.** No new lighting is approved at this time. Any proposed lighting shall be subject to approval by the Director of Planning.
17. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and

processors.

18. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:
<http://www.sanjoseca.gov/index.aspx?nid=2246>.

a. **Transportation:**

- i Traffic Loop replacement shall conform to the CSJ Vehicle Detection Loop Layout Guideline (attached).
- ii CSJ Department of Transportation Dispatch shall be notified at 408-794-1900 prior to the loop replacement work.
- iii Loop replacement shall conform to CSJ Standard Specs Section 86.
- iv Vehicle detectors or pedestrian push buttons taken out of service shall be repaired or replaced within 72 hours.

- b. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, and source controls to minimize stormwater pollutant discharges.

- c. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- d. **Flood Zone X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.

- e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- f. **Undergrounding:** Saratoga Avenue and Campbell Avenue are designated streets and are subject to the In-Lieu Undergrounding fee. The In-Lieu Undergrounding fee is a percentage of the intensification of the project. Overhead wires do not exist along the project frontage of Saratoga Avenue or Campbell Avenue, therefore no In-Lieu undergrounding fees are due with this project.

19. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **11th day of May, 2016.**

Harry Freitas, Director
Planning, Building, and Code Enforcement

Deputy

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